

victims were removed from their home and placed with a Mrs. M. When the children's behavior and statements suggested sexual abuse, Mrs. M. made a report to the county social services department. After making the report, Mrs. M. continued to talk with the children and attempted to tape-record the conversation. Although the tape turned out to be inaudible, Mrs. M. wrote down notes of her conversation with the children immediately after it occurred. Mrs. M. testified to all of this at trial, including recounting what the children told her about the defendant. The defendant was convicted and appealed. The court of appeals rejected the defendant's *Crawford* challenge with respect to this testimony, holding that the child's statements were nontestimonial. The court was not persuaded by the defendant's arguments that Mrs. M. was acting in a quasi-governmental role; instead, it noted, among other things, that the statements were made to Mrs. M., not the police, the victim was less than six years old, and it was highly implausible that he believed the statements would be used prosecutorially.<sup>119</sup>

Post-*Davis* cases of interest from other jurisdictions involving victims' statements to private parties are annotated below.

***Cases Holding That Statements to Private Parties Are Nontestimonial***

*Medina v. State*, 143 P.3d 471 (Nev. 2006) (rape victim's statements to a neighbor who found her after the sexual assault were not testimonial), *petition for cert. filed* (Nov. 17, 2006).

*Patano v. State*, 138 P.3d 477 (Nev. 2006) (child victim's statements to her father in response to questioning regarding possible sexual abuse were nontestimonial), *cert. denied*, 127 S. Ct. 957 (2007).

*Fields v. State*, \_\_ S.E.2d \_\_, 2007 WL 29519 (Ga. Ct. App. Jan. 5, 2007) (robbery victim's statements to the manager of a nearby store, made immediately after the crime, were nontestimonial).

*State v. Buda*, 912 A.2d 735 (N.J. Super. 2006) (statement, "Daddy beat me," blurted out by child to his mother was nontestimonial).

<sup>119</sup>. See also *State v. Brigman*, \_\_ N.C. App. \_\_, 632 S.E.2d 498 (2006) (case related to the one discussed in the text).

***Other Cases of Interest Involving Statements to Private Parties***

*State v. Mechling*, 633 S.E.2d 311, 323-24 & n.10 (W. Va. 2006) (remanding on the issue whether a domestic violence victim's statements to a private onlooker were testimonial).

***13. Excited Utterances (Confrontation One Year Later, at p. 19.)***

The North Carolina Court of Appeals has stated that "after *Crawford*, whether a statement qualifies as an excited utterance is not a factor in our Confrontation Clause analysis."<sup>120</sup> As noted above, however,<sup>121</sup> the declarant's demeanor might be relevant to the determination whether there is an ongoing emergency.

***14. Children's Statements***

***b. Statements to Social Workers, Child Protective Services Workers, and Forensic Interviewers [new title] (Confrontation One Year Later at p. 22).***

The Minnesota case, *State v. Bobadilla*, noted on page 23 of *Confrontation One Year Later* was reversed by that state's supreme court. In a pre-*Davis* decision, the Minnesota Supreme Court held that statements by a child in a risk-assessment interview conducted by a child protection worker were nontestimonial.<sup>122</sup>

Post-*Davis* cases of interest from other jurisdictions are annotated below.

***Cases Holding That Children's Statements to Social Workers, Child Protective Services Workers, and Forensic Interviewers Are Testimonial***

*State v. Justus*, 205 S.W.3d 872 (Mo. 2006) (child victim's statements to an individual who investigated child abuse and neglect for the division of family services as well as those to another individual who performed a forensic interview of the child were testimonial).

<sup>120</sup>. *State v. Allen*, 171 N.C. App. 71 at n.2 (2005).

<sup>121</sup>. See *supra* p. 6.

<sup>122</sup>. *State v. Bobadilla*, 709 N.W.2d 243 (Minn. 2006), *cert. denied*, 127 S. Ct. 382 (2006).